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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: NOV 17 2011 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is studying for a doctor of optometry (O.D.) degree at the New England College of Optometry, Boston, Massachusetts. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and two witness letters.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on December 8, 2009. In an accompanying Form ETA-750B Statement of Qualifications of Alien, the petitioner listed her academic history. The petitioner stated that she earned a B.S. degree in biophysics from Nankai University in China between September 1991 and June 1995 and a Ph.D. degree in neuroscience from Syracuse (New York) University from August 1998 to December 2007. The petitioner stated that she began studying for an O.D. degree at New England College of Optometry in March 2009. Section 15 of the form, headed "work experience," instructed the petitioner to "[l]ist all jobs held during the last three (3) years" as well as any earlier jobs in her intended occupation. The petitioner left this section blank and signed the document, thereby declaring under penalty of perjury that the information on the form was true and correct. In effect, the petitioner declared that she has never worked (as opposed to

studied) in her intended occupation. The petitioner did not claim any academic or professional activity between December 2007 and March 2009.

In a statement accompanying the initial filing, counsel stated:

> [The petitioner] is a scientist with extensive experience and documented record of success in neuroscience and vision science. More specifically, she has been a highly productive and influential research scientist in studying human stereopsis and depth perception research, areas of research that have broad applications in medicine as well as artificial visual systems. . . . [The petitioner] has been making important contributions to these fields that have earned her an international reputation as one of the premier vision researchers. . . .
>
> In addition to her presentations at prestigious international conferences, [the petitioner's] publications in prominent journals such as the *Journal of Vision* were equally influential.

The petitioner submitted copies of seven articles that she co-wrote, all published while she was a doctoral student at Syracuse University. Six of the articles appeared between 2002 and 2004; the seventh saw print in 2007. The petitioner submitted no evidence to show that she continued to produce research for publication after she graduated from Syracuse, or that she had written more than one article after 2004. Counsel repeatedly claimed that the petitioner's work has appeared in multiple journals, using the phrases "prominent journals such as the *Journal of Vision*" and "such leading international journals . . . as the *Journal of Vision*." Every article in the record, however, is from the *Journal of Vision*. The record contains no evidence that any other journal has published any article by the petitioner.

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel's claims, including assertions about the petitioner's reputation and the importance of her work, have no weight. Therefore, counsel's assertions regarding "the proposed benefits from [the petitioner's] work," "her proven record of achievement and her unique and innovative set of skills, knowledge, and background" cannot suffice to demonstrate the petitioner's eligibility.

Five witness letters accompanied the petitioner's initial filing. Counsel stated that two of these letters are "independent evaluations." The other three witnesses served on the petitioner's Ph.D. dissertation committee at Syracuse University. [redacted] stated:

> I was impressed by [the petitioner's] ability. She ranks among the best students whom I had advised during my more than 30 years as a faculty member. . . . [The petitioner] studied human stereopsis, the depth sensation given solely by binocular disparity. . . . [The petitioner] studied how the brain extracts and employed disparity information from retinal images to give us depth sensation.

> In particular, [the petitioner] studied how disparity information carried by high and low spatial-frequency components is combined to give us highly precise depth perception. . . . In a given image, sharp edges are composed of higher spatial-frequency components (fine scales) and the areas or "blobs" confined by edges are composed of lower spatial-frequency components (coarse scales). There are neural channels in the visual cortex of our brain that are tuned to different spatial frequencies. It had been widely believed that disparity information carried by different spatial-frequency channels did not interact with each other, at least not at the stereothreshold level. However, [the petitioner] devised a set of highly original studies and obtained results that suggest that this is not the case. . . . This discovery greatly enhanced our understanding of why we have such exquisite acuity in depth perception.

[redacted] observed that, in addition to their medical significance, the petitioner's findings have applications for "artificial visual systems, which are used by military search and targeting systems and autonomous vehicle navigation systems (e.g., the Mars Rovers)."

Professo[redacted] of the University of California, Berkeley, stated:

> I have known [the petitioner] for almost eight years and have served on her Ph.D. dissertation committee and am therefore very familiar with her research. [The petitioner] is one of the most talented scientists I have ever encountered in my over four decades of research in vision science.
>
> . . . It had been a long standing belief that spatial-frequency channels in the visual system were independent of each other. About twenty years ago, my colleague and I demonstrated that this was also the case in the human stereo vision system. . . . [The petitioner] ingeniously modified the methods and obtained utterly different results, whereby spatial-frequency channels are in fact interacting at the stereothreshold. This is indeed a revolutionary discovery. . . . Such evidence is very important because it leads to the mechanisms beyond the independent channels, a path rarely trodden.

[redacted] University, Syracuse, follows research at Syracuse University because the research groups at the two universities "have at least weekly conference meetings to discuss the state of the field and our work." [redacted] stated that the petitioner's "work is highly significant not only for the field of visual science, but for all of the many applications and ways in which we depend on proper visual depth perception." [redacted] asserted that the petitioner "plans to integrate these efforts with more clinically relevant efforts, so [as] to 'translate' her research results toward applications that can improve the visual health of patients."

The remaining two witnesses each stated that they have not worked directly with the petitioner, but have seen her conference presentations and reviewed her published work. [redacted] New York, New York, described the petitioner's

research work in technical detail and called it "fascinating because it reveals how our visual system might deal with the imbalance in the natural images and it can be tested physiologically." He stated:

> [The petitioner] has not only successfully demonstrated that spatial-frequency channels in the stereo system do interact with each other, but also quantitatively revealed the mechanisms underlying the interaction. These groundbreaking discoveries have profound implications to future research in vision science by guiding the direction of research in both psychophysics and physiology.

[redacted]of National Taiwan University, Taipei, stated:

> I first attended [the petitioner's] presentation at the annual meeting of the Vision Science Society in 2002. Although she had just started to conduct vision research as a graduate student at Syracuse University, her discoveries were truly groundbreaking and left me with a very deep impression. She ranks among the most outstanding scientists I have ever met.

Clearly the witnesses quoted above are highly impressed with the petitioner's work and view it as an important contribution in her specialty. The initial submission, however, lacked objective, documentary evidence to show the extent of the petitioner's impact. Therefore, on February 23, 2010, the director issued a request for evidence. The director stated:

> The record neither claims nor establishes your research has resulted in such significant recognition that you will present a benefit so grate as to outweigh the national interest inherent in the labor certification process.
>
> Too, the record does not establish your work has been responsible for any changes in the thinking or approach of similarly employed personnel in your field.
>
> Also, in your field of endeavor, a look at the number of times your work has been officially cited by colleagues must be considered.
>
> A check of the search engine Google Scholar reveals your three professional publications appearing in the record have been cited on twenty occasions. However, four of those citations are self-cites. . . . This leaves a total of sixteen citations from your colleagues.

In response, counsel claimed that sixteen independent citations "is an impressive number of citations . . . for all researchers in [the petitioner's] specialized sub-field of research."

Five new witness letters accompanied the petitioner's response to the request for evidence. Counsel stated that all of these new witnesses were independent of the petitioner, but one of them, [redacted] is on the faculty of the New England College of Optometry, where the petitioner is a student. [redacted] stated:

> [The petitioner's] breakthrough findings . . . were very well received by researchers at the VSS [Vision Science Society] annual meetings. Leading scientists in the field were very excited because her discoveries are very important in furthering our understanding of human stereo vision, especially as to why we have such exquisite acuity in depth perception. . . . [The petitioner's] discoveries are very important for guiding future experimentation in both psychophysics and physiology.
>
> . . . [The petitioner's] papers have had a significant impact on the field of vision research, which is evidenced by the number of citations (16, excluding self-citation) they have received in a relatively short period of time. Although this may not seem like an inordinate amount of citations, especially compared to other fields of biomedical research, our area of research is a very specialized field. Thus, it is not uncommon to see a paucity of citations in our field.

[redacted] of Johns Hopkins University, Baltimore, Maryland, stated:

> I attended her presentation at the [VSS] annual meeting and I can attest to the strong reception her research received by the international audience of researchers and professional[s] in attendance. In fact, it is my expert opinion that [the petitioner's] revelations are recognized as landmark discoveries because she dispelled previously long-held erroneous viewpoints. . . .
>
> [The petitioner's] publications have been well received by the vision research community. In only a few years, her papers have been cited 16 (excluding self-citations) times by researchers from the US, UK and Japan. Considering that [the petitioner] works in a very specialized and narrow subfield of research, the number of papers citing her publications in such a relatively short period of time is a very impressive record and evidence of the impact of her work. . . . [S]he has deservedly gained an international reputation as a highly respected and outstanding scientist.

Dr. [redacted], lecturer at the University of Glasgow, Scotland, stated:

> In my expert opinion, [the petitioner's] research and developments have significantly advanced research into human stereopsis. Although I have never met her, I have utilized [the petitioner's] scientific results in my own research projects, where I cited her publication . . . in my own research. . . . [The petitioner's] ***work has deepened our knowledge*** of how the visual system may have been implemented to result in a bias in our perception of trajectory angles of a small target traveling in depth.

(Emphasis in original.) [redacted] at Brown University, Providence, Rhode Island, stated that his research group has "cited two of [the petitioner's] papers in each of . . . two of our papers." [redacted] described the petitioner's work in technical detail and concluded: "These are indeed revolutionary discoveries!"

[redacted] Aston University, Birmingham, England, stated that the petitioner's "very original" work has "served as the sole support for our own research results." [redacted] credited the petitioner with "important discoveries that have significant impact on the field of vision as a whole, and human stereo vision in particular."

The director denied the petition on April 15, 2010. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, and quoted from several witness letters. The director stated that none of the witnesses had identified "any particular widespread ramifications or direct applications concerning any neurology or vision-based malady adopted by the medical community" as a result of the petitioner's work. The director also noted that the petitioner had not disputed the low citation figures for her published work. The director concluded that, while the petitioner's talent may have begun to attract some notice, the petitioner had not shown that she qualifies for the national interest waiver.

On appeal, counsel protests that the director "disproportionately" focused on the petitioner's citation rate and "did not take into consideration that she is working in a highly specialized field of research that typically does not have many publications." Counsel states that the director should have given greater weight to the independent witness letters that described the petitioner's work and its importance "in great detail."

Counsel claims that another citation of the petitioner's work has appeared following the petition's filing date. The petitioner submits no actual documentation of this claimed citation, merely an updated citation list.

Two previous witnesses provide new letters on appeal [redacted] stated:

> The significance of her research is evidenced by the fact that her publications have been cited by researchers around the world. . . . These researchers utilized [the petitioner's] results to design their experiments or to implement their computational model. In fact, in some of these projects, [the petitioner's] papers served as the sole support for their own research results. Thus, it is apparent that [the petitioner's] discoveries were instrumental to the scientists who cited her papers. Such an impressive impact should not be taken lightly.
>
> In addition, in my expert opinion, 17 citations (excluding self-citation) in a relative short period of time in the field of vision science are considered in our specialty to be a high number of citations. . . .
>
> [The petitioner] is one of the leading researchers in this field.

[redacted] expressing a sentiment very similar to that found in [redacted] earlier letter, states that the petitioner's "record of citations . . . is in fact very impressive in the field of vision," which "is different from other fields of biomedical research."

Several witnesses have claimed that 16 or 17 independent citations over "a relatively short period of time" was impressive in the petitioner's specialty. Over five years elapsed between the articles' 2004 publication dates and the submission of the witness letters in early 2010. The petitioner did not submit any documentary evidence to show the usual citation rates of articles in the petitioner's specialty. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The record shows that the often-quoted "16 citations" figure (increased to 17 on appeal) is overstated. The petitioner had submitted printouts from http://scholar.google.com, showing nine citations of one article, five for a second, six for a third and two for a fourth. The raw total is 22 citations, but this does not mean there were 22 independent citations of the petitioner's work. [redacted] to anomalies such as variations in the article titles, there are three duplicate listings. The lists, therefore, identify only 19 unique citations. Eleven of these 19 citations appear in articles by the petitioner's co-autho[redacted] sometimes with[redacted] and/or the petitioner herself. Whether the petitioner or a co-author is the one citing his or her own work, the end result does not establish wider impact or influence. Setting aside the 11 self-citations leaves eight independent citations of the petitioner's published work. (Two articles show three independent citations each; a third article has two.)

Regarding the newly claimed 17th independent citation, the first author of the identified article is [redacted] who was also the petitioner's co-author on the cited article. Counsel states that the newly claimed citation shows increasing citation of the petitioner's work, but it actually continues the pattern of self-citations by [redacted] outnumbering citations from all other sources put together.

All three of the petitioner's independently cited papers date from March to May of 2003 (when she submitted the articles for publication). The record does not show that the petitioner has produced any further independently cited publications since that time. The record identifies only one article that the petitioner published after 2004, and nothing published after 2007.

The opinions of experts in the field are not without weight and the AAO has considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r 1972)). USCIS may also give less weight to such letters that are not corroborated, in accord with other information, or are in any way questionable. *Id.* at 795; *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying

weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

The record leaves little doubt that certain researchers have found value in the petitioner's published work, citing it in their own subsequent research. Some of those researchers are of the opinion that the petitioner made a major contribution by overturning a previously dominant hypothesis in the field. The record, however, contains no objective evidence to show that the impact of the petitioner's work extends beyond a handful of researchers. Assertions that the petitioner's citation rate is relatively high for the specialty, and that the petitioner "is one of the leading researchers" in that specialty, are unsupported and appear to be exaggerated. The witnesses have basically focused on work that the petitioner finished in 2003, which indicates a single creative burst rather than an ongoing pattern of influential research that will prospectively benefit the United States. Even a professor at the New England College of Optometry, where the petitioner has studied since 2009, had nothing to say about the petitioner's more recent research work.

In the final analysis, while the petitioner has shown some admirable work in her field, the overall record does not establish a consistent pattern of influential work that would distinguish her from others in her field and demonstrate that a waiver of the job offer requirement would serve the national interest.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.